

including any year for which the State is granted a waiver under paragraph (c) of this section, the financial support required of the State in future years under paragraph (a) of this section must be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

(Authority: 20 U.S.C. 1412(a)(19))

§ 300.155 Policies and procedures for use of Part B funds.

The State must have on file with the Secretary policies and procedures designed to ensure that funds paid to the State under Part B of the Act are spent in accordance with the provisions of Part B.

(Authority: 20 U.S.C. 1412(a)(18)(A))

§ 300.156 Annual description of use of Part B funds.

(a) In order to receive a grant in any fiscal year a State must annually describe—

(1) How amounts retained for State-level activities under § 300.602 will be used to meet the requirements of this part;

(2) How those amounts will be allocated among the activities described in §§ 300.621 and 300.370 to meet State priorities based on input from LEAs; and

(3) The percentage of those amounts, if any, that will be distributed to LEAs by formula.

(b) If a State's plans for use of its funds under §§ 300.370 and 300.620 for the forthcoming year do not change from the prior year, the State may submit a letter to that effect to meet the requirement in paragraph (a) of this section.

(Authority: 20 U.S.C. 1411(f)(5))

**LEA AND STATE AGENCY ELIGIBILITY—
GENERAL**

§ 300.180 Condition of assistance.

An LEA or State agency is eligible for assistance under Part B of the Act for a fiscal year if the agency demonstrates to the satisfaction of the SEA that it meets the conditions in §§ 300.220–300.250.

(Authority: 20 U.S.C. 1413(a))

§ 300.181 Exception for prior LEA or State agency policies and procedures on file with the SEA.

If an LEA or a State agency described in § 300.194 has on file with the SEA policies and procedures that demonstrate that the LEA or State agency meets any requirement of § 300.180, including any policies and procedures filed under Part B of the Act as in effect before June 4, 1997, the SEA shall consider the LEA or State agency to have met the requirement for purposes of receiving assistance under Part B of the Act.

(Authority: 20 U.S.C. 1413(b)(1))

§ 300.182 Amendments to LEA policies and procedures.

(a) *Modification made by an LEA or a State agency.* (1) Subject to paragraph (b) of this section, policies and procedures submitted by an LEA or a State agency in accordance with this subpart remain in effect until it submits to the SEA the modifications that the LEA or State agency decides are necessary.

(2) The provisions of this subpart apply to a modification to an LEA's or State agency's policies and procedures in the same manner and to the same extent that they apply to the LEA's or State agency's original policies and procedures.

(b) *Modifications required by the SEA.* The SEA may require an LEA or a State agency to modify its policies and procedures, but only to the extent necessary to ensure the LEA's or State agency's compliance with this part, if—

(1) After June 4, 1997, the provisions of the Act or the regulations in this part are amended;

(2) There is a new interpretation of the Act by Federal or State courts; or

(3) There is an official finding of non-compliance with Federal or State law or regulations.

(Authority: 20 U.S.C. 1413(b))

§ 300.183 [Reserved]

§ 300.184 Excess cost requirement.

(a) *General.* Amounts provided to an LEA under Part B of the Act may be used only to pay the excess costs of providing special education and related services to children with disabilities.

§ 300.185

(b) *Definition.* As used in this part, the term *excess costs* means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary or secondary school student, as may be appropriate. Excess costs must be computed after deducting—

- (1) Amounts received—
 - (i) Under Part B of the Act;
 - (ii) Under Part A of title I of the Elementary and Secondary Education Act of 1965; or
 - (iii) Under Part A of title VII of that Act; and
- (2) Any State or local funds expended for programs that would qualify for assistance under any of those parts.

(c) *Limitation on use of Part B funds.*

(1) The excess cost requirement prevents an LEA from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to paragraph (c)(2) of this section.

(2) The excess cost requirement does not prevent an LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or State funds are available for non-disabled children in that age range. However, the LEA must comply with the nonsupplanting and other requirements of this part in providing the education and services for these children.

(Authority: 20 U.S.C. 1401(7), 1413(a)(2)(A))

§ 300.185 Meeting the excess cost requirement.

(a)(1) *General.* An LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used.

(2) The amount described in paragraph (a)(1) of this section is determined using the formula in § 300.184(b). This amount may not include capital outlay or debt service.

(b) *Joint establishment of eligibility.* If two or more LEAs jointly establish eligibility in accordance with § 300.190, the minimum average amount is the average of the combined minimum average

34 CFR Ch. III (7–1–02 Edition)

amounts determined under § 300.184 in those agencies for elementary or secondary school students, as the case may be.

(Authority: 20 U.S.C. 1413(a)(2)(A))

§§ 300.186–300.189 [Reserved]

§ 300.190 Joint establishment of eligibility.

(a) *General.* An SEA may require an LEA to establish its eligibility jointly with another LEA if the SEA determines that the LEA would be ineligible under this section because the agency would not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

(b) *Charter school exception.* An SEA may not require a charter school that is an LEA to jointly establish its eligibility under paragraph (a) of this section unless it is explicitly permitted to do so under the State's charter school statute.

(c) *Amount of payments.* If an SEA requires the joint establishment of eligibility under paragraph (a) of this section, the total amount of funds made available to the affected LEAs must be equal to the sum of the payments that each LEA would have received under §§ 300.711–300.714 if the agencies were eligible for these payments.

(Authority: 20 U.S.C. 1413(e)(1), and (2))

§ 300.191 [Reserved]

§ 300.192 Requirements for establishing eligibility.

(a) *Requirements for LEAs in general.* LEAs that establish joint eligibility under this section must—

(1) Adopt policies and procedures that are consistent with the State's policies and procedures under §§ 300.121–300.156; and

(2) Be jointly responsible for implementing programs that receive assistance under Part B of the Act.

(b) *Requirements for educational service agencies in general.* If an educational service agency is required by State law to carry out programs under Part B of the Act, the joint responsibilities given to LEAs under Part B of the Act—

(1) Do not apply to the administration and disbursement of any payments